

UNITED STATES DISTRICT COURT
DISTRICT OF MINNESOTA
Criminal No. 05-270 (DSD/AJB)

United States of America,

Plaintiff,

v.

ORDER

Hudoykul Fattoyevich Hafizov,

Defendant.

This matter is before the court upon defendant's objections to the report and recommendation of United States Magistrate Judge Arthur J. Boylan, dated September 27, 2005. In his report, the magistrate judge recommends that defendant's motion to suppress statements and motion to dismiss based on discriminatory prosecution be denied. After a de novo review of the file and record, the court adopts the magistrate judge's report and recommendation in its entirety.

Defendant objects to the recommendation to deny his motion to suppress statements made on March 16, August 19 and August 22, 2005. The court finds that the magistrate judge correctly concluded that the suppression of defendant's statements is not warranted or required.

Defendant also objects to the recommendation to summarily deny his motion to dismiss the indictment based on discriminatory prosecution or to compel discovery. A defendant must make a prima

facie showing of selective prosecution to support a motion to dismiss or to obtain discovery related to the government's charging decisions. See United States v. Deering, 179 F.3d 592, 595 (8th Cir. 1999); United States v. Kelley, 152 F.3d 881, 885-86 (8th Cir. 1998). The defendant must show (1) that the government singled him out for prosecution while others similarly situated have not been prosecuted and (2) that such singling out was based on an impermissible motive such as race or religion. Deering, 179 F.3d at 595 (citing United States v. Parham, 16 F.3d 844, 846 (8th Cir. 1994)).

Here, defendant alleges that the government began investigating him based on unreliable, irrelevant or false information. He argues that such circumstances support the inference that the government singled him out for prosecution based on his nationality and religion. However, defendant fails to present any evidence of others similarly situated who have not been prosecuted for similar conduct. Further, even if defendant's allegation concerning the insufficient basis for an investigation is true, it alone does not support an inference of improper motive on the government's part. For these reasons, defendant has failed to establish a prima facie case of discriminatory prosecution. The magistrate judge correctly concluded that defendant's motion should be denied.

Therefore, after a de novo review of the file and record, the court adopts the report and recommendation of the magistrate judge [Docket No. 44] in its entirety. Accordingly, **IT IS HEREBY ORDERED** that:

1. Defendant's motion to suppress statements [Docket No. 34] is denied.

2. Defendant's motion to dismiss based on discriminatory prosecution [Docket No. 37] is denied.

Dated: November 2, 2005

s/David S. Doty
David S. Doty, Judge
United States District Court